

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2003-208-C - ORDER NO. 2003-721
DECEMBER 12, 2003

IN RE: Application of Airespring, Inc. for a) ORDER
Certificate of Public Convenience and) GRANTING
Necessity to Provide Intrastate) CERTIFICATE FOR
Telecommunications Services and for) INTEREXCHANGE
Modified Alternative Regulation) AUTHORITY AND
) MODIFIED
) ALTERNATIVE
) REGULATION

This matter comes before the Public Service Commission of South Carolina (the "Commission") by way of the Application of Airespring, Inc. ("Airespring" or the "Company") requesting a Certificate of Public Convenience and Necessity authorizing it to operate as a reseller of interexchange telecommunications services within the State of South Carolina. The Company's Application was filed pursuant to S.C. Code Ann. §58-9-280 (Supp. 2002) and the general regulatory authority of the Commission. By its Application, Airespring also requests alternative regulation of its business services offerings identical to that granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C and requested waiver of certain Commission regulations.

The Commission's Executive Director instructed Airespring to publish, one time, a Notice of Filing in newspapers of general circulation in the areas of the state affected by the Application. The purpose of the Notice of Filing was to inform interested parties of the Application of Airespring and of the manner and time in which to file the appropriate

pleadings for participation in the proceeding. Airespring complied with this instruction and provided the Commission with proof of publication of the Notice of Filing. No Petitions to Intervene or Protests were filed.

A hearing was convened on February 5, 2003, at 11:30 a.m. in the Commission's Hearing Room, Columbia, South Carolina. The Honorable Mignon Clyburn, Chairman, presided. Airespring was represented by John J. Pringle, Jr., Esquire. F. David Butler, General Counsel, represented the Commission Staff.

David Lonstein, Vice President of the Company, appeared and testified in support of the Application. The record reveals that Airespring is a Delaware corporation with its principle place of business in California and is registered to transact business in South Carolina as a foreign corporation. According to Mr. Lonstein, Airespring proposes to offer long distance, toll-free services, and post-paid calling card services for communications originating and terminating within the State of South Carolina. Airespring's services will be provided to both residential and business customers, and Airespring will offer its services twenty-four hours per day, seven days a week. The Company does not own any network switches or transmission facilities and will operate as a reseller of services. Mr. Lonstein explained the Company's request for authority, and the record reveals the Company's services, operations, and marketing procedures.

Mr. Lonstein also discussed Airespring's technical, financial, and managerial resources to provide the services for which it seeks authority to provide. Mr. Lonstein offered that Airespring possesses sufficient financial resources to support its operations in South Carolina. A review of the financial documents submitted as an exhibit to the

Application reveals a healthy current ratio. With regard to management and technical capabilities, Mr. Lonstein stated that he personally has 12 years of experience in the telecommunications industry and that the other officers of the corporation have significant experience in the business. Mr. Lonstein also testified that Airespring will operate in accordance with Commission rules, regulations, guidelines, and Commission Orders.

Mr. Lonstein also offered that approval of Airespring's Application would serve the public interest by increasing the level of long distance competition in South Carolina by providing a high-quality alternative of long distance service, and by increasing consumer awareness of options and services available, thus encouraging the growth and success of competitive services.

After full consideration of the applicable law, the Company's Application, and the evidence presented at the hearing, the Commission hereby issues its findings of fact and conclusions of law:

FINDINGS OF FACT

1. Based on the documents in evidence and the testimony provided at the hearing in this matter, we find that Airespring is organized as a corporation under the laws of the State of Delaware, is headquartered in the State of California and is authorized to do business as a foreign corporation in the State of South Carolina by the Secretary of State.

2. We find that Airespring is currently operating as a non-facilities based reseller of interexchange services, is currently authorized to operate as such in 25 states, and wishes to provide its communications services in South Carolina.

3. We find that the record in this matter supports a finding that Airespring has the experience, capability, and financial resources to provide the services described in its Application.

4. We find that Airespring has shown good cause to warrant a waiver of the requirement that it maintain its books and records in the State of South Carolina, and that it be authorized to maintain such records and books at its corporate headquarters in Van Nuys, California.

5. We find that Airespring has shown good cause to warrant this Commission's consent to a waiver of the requirement that the Company maintain its books and records in accordance with the Uniform System of Accounting (USOA), and that it be allowed to maintain its books and records under Generally Accepted Accounting Principles (GAAP).

6. We find that as Airespring will be offering its services throughout the State of South Carolina, that it is appropriate to grant its request to be exempt from the requirement that it provide operating area maps to this Commission under Regulation 103-612.2.3.

7. Finally, the Commission finds that the approval of Airespring's Application in this matter will serve the public interest of the citizens of South Carolina

by increasing competition within the interexchange marketplace and by providing consumers with a greater choice of long distance services.

CONCLUSIONS OF LAW

1. Based on the above findings of fact, the Commission determines that a Certificate of Public Convenience and Necessity should be granted to Airespring to provide intrastate interLATA service and to originate and terminate toll traffic within the same LATA, as set forth herein, through the resale of intrastate Wide Area Telecommunications Services (WATS), Message Telecommunications Service (MTS), Foreign Exchange Service, Private Line Service, or any other services authorized for resale by tariffs of carriers approved by the Commission.

2. The Commission adopts a rate design for Airespring for its resale of residential services which includes only maximum rate levels for each tariff charge. A rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels has been previously adopted by the Commission. In Re: Application of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

3. Airespring shall not adjust its residential rates below the approved maximum level without notice to the Commission and to the public. Airespring shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances which do not affect the general body of

subscribers or do not constitute a general rate reduction. In Re: Application of GTE Sprint Communications, etc., Order No. 93-638, issued in Docket No. 84-10-C (July 16, 1993). Any proposed increase in the maximum rate level for residential services reflected in the tariff which would be applicable to the general body of the Company's subscribers shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. §58-9-540 (Supp. 2002).

4. With respect to Airespring's business services, consumer card, and operator service offerings, the Commission adopts a relaxed regulatory scheme identical to that granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. Under this relaxed regulatory scheme, tariff filings for business services shall be presumed valid upon filing. The Commission will have seven (7) days in which to institute an investigation of any tariff filing. If the Commission institutes an investigation of a particular tariff filing within the seven days, the tariff filing will then be suspended until further Order of the Commission. Any relaxation in the future reporting requirements that may be adopted for AT&T shall apply to Airespring also. These alternative regulation orders were modified by Order No. 2001-997 in Docket No. 2000-407-C which imposed a cap on operator-assisted calls where a consumer uses a local exchange carrier's calling card to complete calls from locations which have not selected the local exchange carrier as their toll provider. The provisions of this Order and this modification also apply to Airespring.

5. If it has not already done so by the date of issuance of this Order, Airespring shall file its revised tariff and an accompanying price list within thirty (30) days of receipt of this Order. The revised tariff shall be consistent with the findings of this Order and shall be consistent with the Commission's Rules and Regulations.

6. Airespring is subject to access charges pursuant to Commission Order No. 86-584, in which the Commission determined that for access purposes resellers and facilities-based interexchange carriers should be treated similarly.

7. With regard to the Company's resale of service, an end-user should be able to access another interexchange carrier or operator service provider if the end-user so desires.

8. Airespring shall resell the services of only those interexchange carriers or LECs authorized to do business in South Carolina by this Commission. If Airespring changes underlying carriers, it shall notify the Commission in writing.

9. With regard to the origination and termination of toll calls within the same LATA, Airespring shall comply with the terms of Order No. 93-462, Order Approving Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3, 1993), with the exception of the 10-XXX intraLATA dialing requirement, which has been rendered obsolete by the toll dialing parity rules established by the FCC pursuant to the Telecommunications Act of 1996 (See, 47 CFR 51.209). Specifically, Airespring shall comply with the imputation standard as adopted by Order No. 93-462 and more fully described in paragraph 4 of the Stipulation and Appendix B approved by Order No. 93-462.

10. Airespring shall file annual financial information in the form of annual reports and gross receipts reports as required by the Commission. The annual report and the gross receipt report will necessitate the filing of intrastate information. Therefore, Airespring shall keep financial records on an intrastate basis for South Carolina to comply with the annual report and gross receipts filings. The proper form for filing annual financial information can be found at the Commission's website at www.psc.state.sc.us/reference/forms.asp. The title of this form is "Annual Report for Interexchange Companies." This form shall be utilized by the Company to file annual financial information with the Commission and shall be filed no later than **April 1st**.

Commission gross receipts forms are due to be filed with the Commission no later than **October 1st** of each year. The proper form for filing gross receipts information can be found at the Commission's website at www.psc.state.sc.us/reference/forms.asp, and the appropriate form is entitled "Gross Receipts for Utility Companies."

11. The Company shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, the Company shall provide to the Commission in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours. Airespring shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. The "Authorized Utility Representative Information" form can be found at the Commission's website at

www.psc.state.sc.us/reference/forms.asp; this form shall be utilized for the provision of this information to the Commission. Further, the Company shall promptly notify the Commission in writing if the representatives are replaced.

12. The Company is directed to comply with all Rules and Regulations of the Commission, unless a regulation is specifically waived by the Commission.

13. In its Application, Airespring requested a waiver of Reg. 103-610, which requires that records required by the Commission's Rules and Regulations be maintained in South Carolina. The record reveals that Airespring's principal headquarters will be located in Van Nyes, California, and Airespring has requested permission to maintain its books and records at its headquarters in that city and state. The Commission has found sufficient grounds to grant this requested waiver. However, as a condition of the granting of this waiver, Airespring shall make available its books and records at all reasonable times upon request by the Commission or the Commission Staff, and Airespring shall promptly notify the Commission if the location of its books and records changes.

14. Airespring further requested that it be exempt from record keeping policies that require a carrier to maintain its financial records in conformance with the Uniform System of Accounts (USOA). The USOA was developed by the FCC as a means of regulating telecommunications companies subject to rate base regulation. As a competitive carrier, Airespring maintains its book of accounts in accordance with Generally Accepted Accounting Principles (GAAP). GAAP is used extensively by interexchange carriers. Moreover, Airespring asserts that because it utilizes GAAP, the Commission will have a reliable means by which to evaluate Airespring's operations and

assess its financial fitness. Accordingly, Airespring hereby requests an exemption from the USOA requirements. We grant the Company's request for the reasons stated above in the Commission's findings of fact.

15. Each telecommunications company certified in South Carolina is required to file annually the Intrastate Universal Service Fund (USF) worksheet. This worksheet provides the Commission Staff information required to determine each telecommunications company's liability to the State USF fund. The Intrastate USF worksheet is due to be filed annually no later than **August 15th**.

16. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



Mignon L. Clyburn, Chairman

ATTEST:



Bruce F. Duke, Acting Executive Director

(SEAL)